

MINUTES  
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS  
Tuesday, February 17, 2004, at 9:00 a.m.  
**State Capitol Building, Room 303**

PRESENT: Governor Judy Martz, , Attorney General Mike McGrath, Secretary of State Bob Brown,

VIA Phone: State Auditor John Morrison and Superintendent of Public Instruction Linda McCulloch

Motion was made by Mr. McGrath to approve the minutes from the regularly scheduled meeting of the Board of Land Commissioners held January 20, 2004. Seconded by Mr. Brown. Motion carried unanimously.

BUSINESS TO BE CONSIDERED

204-1            LOWER BLACKFOOT RIVER ACQUISITION AT "WEIGH STATION" – FWP

This request is brought before the Board by the Department of Fish, Wildlife, and Parks and is for an acquisition of land by FWP from the Department of Transportation.

Jeff Hagener, Director, FWP, said this is a six-acre parcel near Bonner, Montana, it is familiar to hunters because FWP has a check station on this site in the fall. Currently, this site is owned by Plum Creek who has an easement on it to DOT for highway maintenance and recreation. Plum Creek wishes to dispose of the parcel, and there have been negotiations for a couple of years between FWP and Plum Creek. In 2002, the appraised value was \$200,000. Plum Creek has agreed to stick with the 2002 appraisal price of \$200,000. It is a very heavily used site, the Blackfoot corridor gets around 38,000 recreational visits every year through that site, a lot of them come in and out right on the parcel. It is a significant area for fishing access that we think is important to retain. There was an EA produced and there were six responses. Five were positive responses, the sixth one said the price was too high but supported acquiring it as a fishing access site. Mr. Hagener urged the Board to approve the acquisition.

Motion was made by Mr. Morrison to approve the acquisition of the Weigh Station site. Seconded by Ms. McCulloch and Mr. McGrath simultaneously. Motion carried unanimously.

204-2            TOWER ROCK TRANSFER FROM MDT TO FWP

This proposed acquisition is a transfer from the Department of Transportation to the Department of Fish, Wildlife and Parks.

Mr. Hagener said FWP has been in negotiations with DOT for some time looking at the transfer of this site. During the last legislative session there was a bill that specifically prohibited DOT or the state from selling that property, but it allowed that it could be transferred within the state for government purposes. It is located along that long stretch of the river after you cross the bridge before Hardy going towards Great Falls, it is the rock on the left-hand side, on the west side,

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 2

between I-15 and the frontage road near the exit to Hardy Creek. This is a significant site along the Lewis and Clark journey. That was a part of the Lewis and Clark journey where they wrote in their journals that they were leaving the prairie and entering the mountains. There were several bearings taken from Tower Rock for surveys that were significant along the journey. It is property held by DOT for many years, who originally acquired it for highway purposes. But DOT does not need the primary part of the rock for their purposes, and FWP has negotiated that they would transfer the 136.82 acres for no cost to FWP. FWP's intent is to leave it as a minimal-developed site, mostly for interpretation, and working with DOT, part of this will be an easement. There is a garbage transfer station and a propane tank that also sits on the site, DOT will be retaining those but will give FWP an easement to allow it to use the road that comes off the frontage road for a small development for parking where people can stop and look at the signs that tell of the significance of the site. There has been an agricultural lease in place for many years and FWP's intent would be to renegotiate to continue a similar lease, with one of the primary purposes being weed control. This lessee has done a good job with weed control, and we would like to continue in that process. Mr. Hagener urged the Board to approve the transfer.

Richard Alberts, Lewis and Clark Trail Bicentennial Commission of Lewis and Clark County, said even though Tower Rock resides in Cascade County, he wanted to state that his organization fully supports what has been done to develop this particular piece of property. As was mentioned, this was of very historical significance to the Lewis and Clark expedition. It is the point where the Missouri River leaves the Rocky Mountains, and that was very significant, particularly to Lewis. He spent a couple of days up there getting the latitude and longitude of this location. He said his organization commends the people of the Cascade area who have gone out of their way to obtain this for historical significance for the people of the State of Montana.

Stephen Kubick, Upper Missouri Bicentennial Commission, said his organization represents Cascade and Choteau Counties, Great Falls, and Fort Benton. We strongly support this issue and the development and preservation of this historical site. It is halfway between Glacier and Yellowstone Parks, and there is a lot of history that has not been told about the Lewis and Clark journey and about the points in Montana, the high ground of the Missouri. We hope because of what it will do to history that has been left untold for many years, it will give the visiting public an opportunity to see some of Montana's prized possessions so they can enjoy what the Corps of Discovery has done for the United States.

Marvin Holtz, resident of the Missouri Canyon near Tower Rock, said he seconds everything that has been said and asks for support for obtaining this site.

Cheryl Hutchinson, property owner on Hardy Creek, said for the past four years she had pleaded to keep Tower Rock in public ownership. It was rewarding to see the legislature concur with that position. She believes that Tower Rock's odds for being properly cared for are better than they have been. As others have said, the Native American's certainly knew, and the expedition knew, that that point was the northeast entrance to the Rockies, the entire ecosystem changes, and the National Park Service now states that Tower Rock marks the end of the first phase of the expedition and the beginning of the next. What most people do not know is that this area is the only one-year-to-the-date anniversary along the entire multi-state trail for members of the expedition to have been at the same location. On July 17, 1805, the entire

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 3

expedition went over the rapids and around the rock, and on July 17, 1806, Sergeant John Ordway and nine others spent the entire afternoon there. There are multi-faceted opportunities for interpretation and if that happens, she pledges her own personal operation to help with the interpretative work.

Motion was made by Mr. McGrath to approve the transfer. Seconded by Mr. Brown. Motion carried unanimously.

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 4

204-3      GURNETT CREEK TIMBER SALE

This proposed timber sale is located 16 miles northeast of Townsend and proposes to harvest timber from 125 acres yielding 2,053 tons, a little over ¼ million board feet of timber. The purpose is to maintain and develop a multi-aged Douglas fir stand that is historically reflective of conditions that would occur through a natural fire regime. The department's archaeologist has conducted a record search and found no historical or cultural sites. Public involvement was solicited through legal notices in newspapers and letters sent to interested parties and agencies. All concerns have been addressed in the EA and no significant environmental impacts will occur. The sale will yield \$20,000 in revenue, with an additional \$1.84/ton Forest Improvement Fee. Mr. Clinch requested the Board to authorize the sale of the Gurnett Creek Timber Sale.

Motion was made by Ms. McCulloch to approve the sale. Seconded by Mr. Brown. Motion carried unanimously.

204-4      GOAT SQUEEZER II TIMBER SALE

This proposed sale is located 13 miles south of Swan Lake in the Swan Valley, and the sale involves the harvest from 678 acres, yielding 13,000 tons from 16 separate harvest units. The purpose is to promote stand health and vigor by removing trees that are at risk or infected with insects or disease, reducing densely stocked stands, and returning the stand to a more historical condition and to put that stand into a more desirable future condition. Access is across existing roads, a temporary road use permit has been obtained. There will be minimal new road construction, as well as reconstruction, and a substantial amount of maintenance on the access roads. An archaeological report was completed and there are no historical or cultural sites. Solicitation was done through legal notices in newspapers and by notifying interest groups and agencies. No significant environmental impacts will result. The proposed volume harvested will yield about \$250,000, and there is a \$10.99/ton Forest Improvement Fee. Mr. Clinch said in July 2003, the Board approved the Goat Squeezer I Timber Sale and both Goat Squeezer I and Goat Squeezer II were analyzed in an umbrella MEPA document that covered both of the sales. Following the approval of Goat Squeezer I, the department was litigated by the Friends of the Wild Swan and there is ongoing litigation associated with that. Mr. Clinch requested Mr. Tommy Butler update the Board on the legal proceedings.

Tommy Butler, Legal Counsel, DNRC, said currently we do have a case on the Goat Squeezer I Timber Sale with the Friends of the Wild Swan versus State of Montana. Recently the court considered the department's Motion to Dismiss and the Plaintiff's Motion for Preliminary Injunction. Judge Sherlock refused to issue a Temporary Restraining Order in this case noting that the sale was underway and the revenue was being produced for the trust beneficiaries. In that instance, he said he would strictly construe the requirements of Section 77-1-110, MCA, to require an injunction bond to guarantee that stream of revenue for the benefit of the trust beneficiaries in this case. We've yet to hear the court's ruling on all the motions, but currently all motions have been submitted, the court has not issued a restraining order, and accordingly, I've advised the department it is free to proceed with this sale.

Mr. Clinch said it is the department's position that it will request the Board to approve the sale, and as we go forth, there is a considerable time delay between the time the Board approves a

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 5

sale and when the department would advertise it and operations would occur. So, if there is concern about the outcome of ongoing litigation that would have an effect on this sale, should Judge Sherlock rule in the coming weeks relative to Goat Squeezer I, and should that have any bearing on this sale, clearly there are timeframes that will allow the department to respond accordingly.

Motion was made by Mr. Brown to approve the Goat Squeezer II proposed timber sale. Seconded by Mr. McGrath. Motion carried unanimously.

204-7            MOON CREEK SALVAGE TIMBER SALE

This sale will harvest salvage timber affected by the Moon Creek wildfire from this past season. This sale is located 30 miles south and west of Miles City, and was part of a large wildfire that occurred last summer on both state and private land. The sale will remove the damaged timber and promote conditions favorable to the recovery of that site. The harvest volume is proposed to be a little over 3,700 tons off of 244 affected acres. We will have a minimum amount of existing road that will be reconstructed and several miles of temporary road spurs that will be reclaimed following the conclusion of the sale. Public involvement was solicited, an archaeological records search was completed and found no historical or cultural sites, and there are no significant environmental impacts. The sale will generate \$13,000 with a minimum Forest Improvement Fee of \$.40/ton. Mr. Clinch requested approval.

Motion was made by Mr. McGrath to approve the Moon Creek Salvage Timber Sale. Mr. Brown seconded the motion. Motion carried unanimously.

204-5            CX RANCH FIELD – CBM WELL DRILLING APPLICATION

This is a request for approval for authorization of eleven coalbed methane (CBM) wells on a tract of school trust land in Section 36. The applicant is Fidelity Exploration and Production. This particular tract of state land is totally within the CX Field south of Decker, Montana, near the Wyoming border. In September 2003, the department brought a similar proposal to the Board where an isolated tract of land was being proposed for CBM. Monte Mason, DNRC, and Fidelity gave a presentation on both CBM and the physical characteristics and geography. The one today is very similar. In the Board's packet is a map showing the current development at the CX Field and that this tract of state land is totally surrounded by developed CBM. That is of interest because the proposal for the eleven wells will tie into existing collection and compressor processes requiring minimal disturbance on trust land and yet allowing us to maximize recovery of the resource below the school trust section. The surface of the state tract is leased for grazing, however, it lacks water. Through the CBM development there has been an agreement to use some of the produced water to provide for stockwater. The water that will be generated will be pumped off site and treated according to the permit conditions and requirements allowed by the Department of Environmental Quality.

Monte Mason, DNRC, said Mr. Clinch covered the overall perspective. He pointed out the location of the wells and the expansion area that was depicted on the map the Board received. He said the proposal is for eleven wells on three pads covering three quarter sections that have

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 6

not been developed yet. We do not own all the section for minerals and there are some wells within Section 36 on fee lands, we are participating in those pursuant to normal agreements. There are wells around it producing and production, gas, and water will go through to existing, already-constructed operation facilities.

Mr. McGrath said his understanding is about 884 gpm of water would be the result of this development.

Mr. Mason said there are eleven wells proposed, based on the production history of wells surrounding it, they will probably begin at 10 gpm/well, then drop off to 3 gpm/well.

Mr. McGrath said that water discharge has been permitted by DEQ?

Mr. Mason said that's correct. The wells are permitted for roughly 1600 gpm and they are considerably below that now. This is an allowable discharge from the state and the adjacent land that will be managed under that permit.

Brenda Lindlief-Hall, Tongue River Water User's Association, said her clients commented on the EA that was prepared for this project and there seemed to be a number of deficiencies. Foremost, is the failure to analyze alternatives that they believe are clearly viable. First, is the ability to reinject the water produced from CBM development, produced from these eleven wells. Reinjection has been a widely and long used method of handling or disposing of the water produced, yet the EA does not even mention the fact that that is currently available technology. There is also current technology, the Higgins Loop Water Treatment Technology, available for water treatment. The Powder River Gas Company has proposed to treat its water before discharging it into the Tongue River using this method and that application is presently before the DEQ. She believes there are alternatives for the disposal of this water that should be examined, and they haven't been looked at in any of the environmental documents prepared. Water will be produced from these wells, and although it may not be stored or disposed of on the state land, it still has impacts to the aquifers. One potential impact not analyzed in the EA, but clearly has potential for significant impacts, is drawdown of the aquifers. The recharge rates of the coalbed aquifers is probably very slow, according to an EPA study, the aquifers in the Ft. Union area have not recharged since the early 1950's. There are a number of domestic wells and springs in the area that will be impacted. Those impacts should be discussed at a minimum. Apparently some of the water will be stored, not on state land, but there is an impoundment on the CX Ranch that states the impoundment will be enlarged from a holding capacity from 41 acre-feet up to over 200 acre-feet of water. There aren't any standards that provide for liners, or ensuring the water stored in the impoundment does not seep into the shallow aquifers and affect the aquifers and make it's way to surface waters and impact the domestic wells in the area as well. We believe there should be standards for lining the impoundments and monitoring to ensure no leakage occurs into the aquifers.

Bruce Williams, Vice President of Operations, Fidelity, said he wanted to respond to comments made. The suggestion that the water ought to be reinjected is not a suggestion that has been rejected or dismissed by Fidelity. We have done exploration in the area of our development and there are not suitable zones in which to reinject the water. People had suggested it is only a matter of economics and that it is much more economical for us to discharge the water into the river than to reinject it. While that is true, the fact is there are not suitable zones underlying the

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 7

lands we're talking about here that can accept that water. It has been tried on the Wyoming side of the border, extensively by J. Hubber, and they drilled eleven injection wells and did not have a single successful one. In the exploration, Fidelity did look for deeper zones in which to inject this water, but there weren't any deeper zones that would accept the water. Its not something that had been rejected, you have to first find a zone with porosity that can accept the water and then that zone can't be full. Its like pouring a final cup of water into a bathtub full of water, it will overflow. That is true with underground reservoirs that contain water. He responded to the comment on the Higgins Loop Technology, saying that technology is currently being used in one application in the State of Wyoming for treatment of produced water. The water is not of the same quality, it is of better quality than the water produced in the Tongue River area. Fidelity is considering use of the Higgins Loop technology as part of further expansion proposed in 2004 on a test basis.

Mr. Williams said as was mentioned, DEQ is currently considering an application from Powder River Gas. Power River Gas does not yet have an acceptable permit that would allow use of the Higgins Loop technology because it works fine for removing sodium and some of the other constituents that are of concern in the water, but it doesn't remove some of the other constituents that are limitations even more than the sodium. So it isn't the be-all, end-all solution to the problem that it is made out to be. We are continuing to look at that and work with it. It is not appropriate to consider it for the treatment of some place between 110 gallons and 33 gallons per minute of produced water from the state lands, it is just not economical to consider for that small a volume. It was mentioned that there are a number of domestic wells in this area, and that is true. Most of the domestic wells in this area are not producing from the coal seams that we are producing from. This area is immediately adjacent to the Tongue River and most of the domestic wells are producing from alluvial aquifers associated with the Tongue River, and we have not seen an impact on those alluvial aquifers from the production that has gone on in this area for four years. We have agreements with all the adjoining landowners that have domestic wells, both in Wyoming and Montana. We have been monitoring the performance of those wells and there has not been a problem associated with production from those wells because they are not in the same aquifer that we are producing from.

Finally, concerning the reference to the impoundment enlargement, none of the water from the wells on the state section would go to that impoundment. The infrastructure, the piping, is not available to deliver the water to that impoundment. It is possible that water from other wells that were part of this overall plan of development, which included 22 federal wells and 3 additional fee wells, could possibly go to that impoundment. The need to enlarge that impoundment is not part of the existing Dry Creek Plan of Development. That need may exist for additional development we do in a proposal we're calling our Coal Creek Plan of Development, which was submitted to the Montana Board of Oil and Gas last week. While we included that in our water management plan, that particular impoundment is not a part of what is required to deal with the water from these eleven state wells.

Governor Martz asked if we did not approve the wells on the state land, other wells out on the perimeter of state land can take that gas, so the state school fund would miss out on the revenue from this, is that correct?

Mr. Williams replied yes, that's correct.

MINUTES  
February 17, 2004  
BOARD OF LAND COMMISSIONERS  
Page 8

Motion was made by Mr. Brown to approve the application from Fidelity. Seconded by Mr. McGrath. Motion carried unanimously.

204-6      RIGHTS-OF-WAY APPLICATIONS

This month there are 33 application for rights-of-way. Numbers 12292, 12293, 12294, 12295, 12296, 12297, 12298, 12299, 12230, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, and 12310 are from Hill County Electric Cooperative for various electric distribution lines; #12311, 12312, 12313, 12314, 12315, 12316, 12317, 12318, 12319, 12320, and 12321 are from Nemont Telephone Cooperative for various buried telephone distribution lines; #12326 is from Powder River Energy Corp for an overhead three-phase distribution powerline; #12260 is from Wibaux County for highway construction and maintenance; and #12327 is from Park County for airport purposes including access road. Mr. Clinch said the last request is from Park County for the Gardiner Airport, and even though there has been approval in the past, the finalization never came to fruition. Consequently, this request is for an outright sale of the easement to Park County which will place the airport facility into a condition that will allow Park County to secure federal funds for improvements. Mr. Clinch requested approval from the Board of the entire packet.

Motion was made by Mr. Morrison to approve the Rights-of-Way applications. Seconded by Mr. Brown. Motion carried unanimously.

PUBLIC COMMENT

None at this meeting.

Motion was made by Mr. Brown to adjourn. Seconded by Mr. McGrath.

Meeting adjourned.